



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

MAY 21 2014

Michelle Morin
Chief, Environment Branch for Renewable Energy
Environmental Division
Bureau of Ocean Energy Management
381 Elden Street
Mail Stop 1328
Herndon, VA 20170

Re: ESA Consultation for Cape Wind

Dear Ms. Morin,

Enclosed is an amended Incidental Take Statement (ITS) for the biological opinion (Opinion), issued by us on December 30, 2010, under Section 7(a)(2) of the Endangered Species Act (ESA), to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEM) regarding the proposed construction, operation and future decommissioning by Cape Wind Associates, LLC of a wind energy project on Horseshoe Shoal in federal waters of Nantucket Sound, Massachusetts. While BOEM is the lead Federal agency for the section 7 consultation, the U.S. Army Corps of Engineers, Environmental Protection Agency and the Department of Energy also have a role in authorizing or funding the action. We will be sending a copy of this letter and amended ITS to those agencies as well.

The amended ITS is being issued in response to the decision by the Federal district court in Public Employees for Environmental Responsibility et al., v. Beaudreau et al., 1:10-cv-01067-RBW (D.D.C., March 14, 2014). The amended ITS adds a new section entitled "ESA Listed Marine Mammals." It indicates that we do not anticipate any incidental take of North Atlantic right whales, fin whales and humpback whales and that the amount or extent of incidental take is set at zero. If there is any incidental take of North Atlantic right whales, humpback whales or fin whales, we will consider the specified amount or extent of incidental take to be exceeded, and, pursuant to 50 CFR §402.14(h)(4) and 50 CFR §402.16(a), consultation must be reinitiated immediately. The amended ITS includes Reasonable and Prudent Measures and implementing Terms and Conditions necessary and appropriate for monitoring and reporting any incidental take of listed whales. These measures are consistent with monitoring and reporting requirements included as part of the proposed action we analyzed in the 2010 Opinion and the measures required by the lease you issued to Cape Wind on November 1, 2010. As required in those documents, any interactions with ESA listed whales must be reported to NMFS within 24 hours.



The amended ITS still includes the measures required to minimize, monitor, and report any take of sea turtles.

We look forward to continuing to work cooperatively with your office to minimize the effects of energy projects on listed species in the northeast region. For further information regarding any consultation requirements, please contact Julie Crocker at (978)282-8480 or by e-mail (Julie.Crocker@noaa.gov). Thank you for working cooperatively with my staff throughout this consultation process.

Sincerely,


for John K. Bullard
Regional Administrator

cc: Lewandowski- BOEM
McDonnell – EPA R1
Adams – ACOE
McMillan – DOE

File Code: Section 7 MMS/BOEM Cape Wind Nantucket
PCTS: NER-2010-3866